

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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INFINITY CAPITAL LLC, *et al.*,

Plaintiffs,

vs.

FRANCIS DAVID CORPORATION,

Defendant.

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Case Nos. 1:18-cv-2422  
1:18-cv-2423 (related case)

OPINION & ORDER  
[Resolving Doc. [27](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Days before trial, Defendant Francis David Corporation moves to realign the parties.<sup>1</sup> It now wants to be the plaintiff.

Both sides assert claims; both sides bear burdens of proof.<sup>2</sup> Thus, who is called what determines only who argues first at trial. The predominant issue in this case is whether Francis David’s cancellation of contract payments was proper. Thus, Infinity Capital LLC and John Paul Golino should go first—they must demonstrate that the decision was unlawful.

Further, the Court determined the parties’ alignment on November 9, 2018, when it consolidated these cases.<sup>3</sup> If Francis David disagreed, it should have objected then—not on the eve of trial.

For the foregoing reasons, the Court **DENIES** Defendant’s motion to realign.

IT IS SO ORDERED.

Dated: February 6, 2019

*s/ James S. Gwin*  
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JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Docs. [27](#), [28](#). Plaintiffs oppose. Doc. [37](#).

<sup>2</sup> Doc. [1](#); Notice of Removal, *Francis David Corp. v. Infinity Capital LLC* No. 1:18-cv-2423 (N.D. Ohio Oct. 18, 2018), ECF. No. [1](#).

<sup>3</sup> Doc. [13](#).